

AMENDED IN ASSEMBLY APRIL 15, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2469

Introduced by Assembly Member Bill Berryhill

February 19, 2010

~~An act to add Chapter 9 (commencing with Section 39950) to Part 2 of Division 26 of the Health and Safety Code, relating to air pollution.~~
An act to add Section 39615 to the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

AB 2469, as amended, Bill Berryhill. State Air Resources Board: dispute resolutions.

Existing law authorizes the State Air Resources Board to regulate pollution from primarily vehicular sources, and designates the state board as the state agency charged with monitoring and regulating sources of emissions of greenhouse gases.

~~This bill would allow a person to seek relief regarding that person's ability to comply with any requirement imposed or administered by the state board, by applying for a dispute resolution order from a hearing officer, pursuant to specified requirements~~ *require the state board to adopt a process to resolve disputes regarding any person's ability to comply with specified air pollution requirements.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 39615 is added to the Health and Safety
2 Code, to read:

3 39615. The state board shall adopt a process to resolve disputes
4 regarding any person's ability to comply with any requirement of
5 Division 25.5 (commencing with Section 38500), any requirement
6 of this division administered by the state board, or any rule,
7 regulation, or order of the state board.

8 SECTION 1. ~~Chapter 9 (commencing with Section 39950) is~~
9 ~~added to Part 2 of Division 26 of the Health and Safety Code, to~~
10 ~~read:~~

11
12 ~~CHAPTER 9. DISPUTE RESOLUTION ORDERS~~

13
14 39950. ~~(a) Any person may apply to the executive officer of~~
15 ~~the state board for a dispute resolution order regarding that person's~~
16 ~~ability to comply with any requirement of Division 25.5~~
17 ~~(commencing with Section 38500), any requirement of this division~~
18 ~~administered by the state board, or of any rule, regulation, or order~~
19 ~~of the state board.~~

20 ~~(b) A dispute resolution order granted by a hearing officer~~
21 ~~pursuant to this chapter may provide any relief deemed appropriate~~
22 ~~by the hearing officer after a hearing conducted in accordance with~~
23 ~~this chapter, including, but not limited to, any of the following:~~

24 ~~(1) Modification of a greenhouse gas emissions limit or related~~
25 ~~requirements, as established pursuant to Division 25.5~~
26 ~~(commencing with Section 38500).~~

27 ~~(2) Adjustment of greenhouse gas emission allowance~~
28 ~~allocations under Division 25.5 (commencing with Section 38500).~~

29 ~~(3) Extension or adjustment of performance or delivery~~
30 ~~deadlines.~~

31 ~~(4) Temporary or permanent revision to the terms or conditions~~
32 ~~of an operating permit imposed pursuant to Division 25.5~~
33 ~~(commencing with Section 38500).~~

34 ~~(5) Issuance of advisory or declaratory opinions regarding~~
35 ~~agency authority where multiple agencies exercise potentially~~
36 ~~conflicting jurisdiction.~~

37 ~~(6) Making findings or declarations regarding actions that may~~
38 ~~be desirable or necessary by other agencies or departments.~~

1 ~~(e) The hearing officer shall hold a hearing pursuant to this~~
2 ~~chapter to determine under what conditions, and to what extent, a~~
3 ~~dispute resolution order shall be granted. No dispute resolution~~
4 ~~order may be issued, modified, or revoked by a hearing officer,~~
5 ~~unless a public hearing has been held by the hearing officer~~
6 ~~pursuant to this chapter.~~

7 39951. ~~(a) Any person who is, or will be, out of compliancee~~
8 ~~with any requirement of Division 25.5 (commencing with Section~~
9 ~~38500), any requirement of this division administered by the state~~
10 ~~board, or of any rule, regulation or order of the state board, who~~
11 ~~has submitted an application for a dispute resolution order and~~
12 ~~who desires to commence or continue operation pending the~~
13 ~~decision of the hearing officer on the application, may submit an~~
14 ~~application for an interim dispute resolution order.~~

15 ~~(b) An interim dispute resolution order may be granted for good~~
16 ~~cause stated in the dispute resolution order. The interim dispute~~
17 ~~resolution order shall not be valid beyond the date of decision of~~
18 ~~the hearing officer on the application of the dispute resolution~~
19 ~~order, or for more than 90 days from date of issuance of the interim~~
20 ~~dispute resolution order, whichever occurs first.~~

21 ~~(c) The hearing officer shall not grant an interim dispute~~
22 ~~resolution order after the hearing officer has held a hearing in~~
23 ~~compliance with the requirements of this chapter, or when such~~
24 ~~an order is being sought to avoid the notice requirements of Section~~
25 ~~39962.~~

26 39952. ~~If a person granted a dispute resolution order with a~~
27 ~~schedule of increments of progress files an application for~~
28 ~~modification of the schedule and is unable to notify the hearing~~
29 ~~officer sufficiently in advance to allow the hearing officer to~~
30 ~~schedule a public hearing on the application, the hearing officer~~
31 ~~shall not grant more than one interim authorization, valid for 30~~
32 ~~days or less, to that person to continue operation pending the~~
33 ~~decision of the hearing officer on the application. The interim~~
34 ~~authorization shall not be granted for a requested extension of a~~
35 ~~final compliance date or when the original dispute resolution order~~
36 ~~expressly required advance application for the modification of an~~
37 ~~increment of progress.~~

38 39953. ~~(a) A dispute resolution order shall not be granted~~
39 ~~unless the hearing officer makes all of the following findings:~~

1 ~~(1) The petitioner for a dispute resolution order is, or will be,~~
2 ~~in violation of any requirement of Division 25.5 (commencing~~
3 ~~with Section 38500), any requirement of this division administered~~
4 ~~by the state board, or of any rule, regulation, or order of the state~~
5 ~~board.~~

6 ~~(2) Due to conditions beyond the reasonable control of the~~
7 ~~petitioner, requiring compliance would result in either an arbitrary~~
8 ~~or unreasonable taking of property, or the practical closing and~~
9 ~~elimination of a lawful business. When the petitioner is a public~~
10 ~~agency, the hearing officer shall consider whether or not requiring~~
11 ~~immediate compliance would impose an unreasonable burden upon~~
12 ~~an essential public service.~~

13 ~~(3) The closing or taking would be without a corresponding~~
14 ~~benefit in reducing air pollution.~~

15 ~~(4) The applicant for the dispute resolution order has given~~
16 ~~consideration to curtailing operations of the source of the emissions~~
17 ~~in lieu of obtaining a dispute resolution order.~~

18 ~~(5) During the period the dispute resolution order is in effect,~~
19 ~~that the applicant will reduce excess emissions to the maximum~~
20 ~~extent feasible or will take all reasonably available actions to~~
21 ~~achieve the pertinent regulatory objective.~~

22 ~~(6) During the period the dispute resolution order is in effect,~~
23 ~~that the applicant will monitor or otherwise quantify emission~~
24 ~~levels from the source, if requested to do so by the state board,~~
25 ~~and report these emission levels to the state board pursuant to a~~
26 ~~schedule established by the state board.~~

27 ~~(b) As used in this section, the following terms have the~~
28 ~~following meanings:~~

29 ~~(1) “Essential public service” means a prison, detention facility,~~
30 ~~police or firefighting facility, school, health care facility, landfill~~
31 ~~gas control or processing facility, sewage treatment works, or water~~
32 ~~delivery operation, if owned and operated by a public agency.~~

33 ~~(2) “Public agency” means any state agency, board, or~~
34 ~~commission, any county, city and county, city, regional agency,~~
35 ~~public district, or other political subdivision of the state.~~

36 ~~39954. The hearing officer, in determining whether or not the~~
37 ~~petitioner has presented evidence sufficient to make the finding~~
38 ~~specified in paragraph (2) of subdivision (a) of Section 39953 shall~~
39 ~~consider, in addition to any other relevant factors, both of the~~
40 ~~following:~~

1 ~~(a) In determining whether or not conditions exist that are~~
2 ~~beyond the reasonable control of the petitioner, the hearing officer~~
3 ~~shall consider the extent to which the petitioner took actions to~~
4 ~~comply or seek a dispute resolution order, which were timely and~~
5 ~~reasonable under the circumstances. In so doing, the hearing officer~~
6 ~~shall consider actions taken by the petitioner since the adoption~~
7 ~~of the rule, regulation, or order from which the dispute resolution~~
8 ~~order is sought.~~

9 ~~(b) In determining whether or not requiring compliance would~~
10 ~~result in either an arbitrary or unreasonable taking of property or~~
11 ~~the practical closing and elimination of a lawful business, the~~
12 ~~hearing officer shall consider whether or not an unreasonable~~
13 ~~burden would be imposed upon the petitioner if immediate~~
14 ~~compliance is required.~~

15 ~~39955. Upon making the specific findings set forth in Section~~
16 ~~39953, the hearing officer shall prescribe requirements no more~~
17 ~~onerous than those imposed by statute or by any rule, regulation,~~
18 ~~or order of the state board, that would be applicable to plants and~~
19 ~~equipment operated by specified industry or business or for~~
20 ~~specified activity, or to the operations of individual persons. In~~
21 ~~prescribing other and different requirements, in accordance with~~
22 ~~this section, the hearing officer, insofar as is consistent with the~~
23 ~~Legislature's declarations in Sections 39000 and 39001, shall~~
24 ~~exercise a wide discretion in weighing the equities involved and~~
25 ~~the advantages to the residents of the state from the reduction of~~
26 ~~air contaminants and the disadvantages to any otherwise lawful~~
27 ~~business, occupation, or activity involved, resulting from requiring~~
28 ~~compliance with these requirements.~~

29 ~~39956. (a) The hearing officer may require, as a condition of~~
30 ~~granting a dispute resolution order, that a bond be posted by the~~
31 ~~party to whom the dispute resolution order was granted to ensure~~
32 ~~performance of any construction, alteration, repair, or other work~~
33 ~~required by the terms and conditions of the dispute resolution~~
34 ~~order. The bond may provide that, if the party granted the dispute~~
35 ~~resolution order fails to perform the work by the agreed date, the~~
36 ~~bond shall be forfeited to the state board, or the sureties shall have~~
37 ~~the option of promptly remedying the dispute resolution order~~
38 ~~default or paying to the state board an amount, up to the amount~~
39 ~~specified in the bond, that is necessary to accomplish the work~~
40 ~~specified as a condition of the dispute resolution order.~~

~~(b) This section does not apply to vessels so long as the vessels are not operating in violation of any federal law enacted for the purpose of controlling emissions from combustion of vessel fuels.~~

~~39957. After notice and a hearing, the hearing officer may modify or revoke, by written order, any dispute resolution order. After notice and a hearing, the hearing officer may review and for good cause, including a change in the availability of materials, equipment, or adequate technology, modify a schedule of increments of progress or a final compliance date in that schedule.~~

~~39958. (a) The hearing officer, in making any dispute resolution order, shall specify the time during which the order shall be effective, which shall not exceed one year, except as otherwise provided in subdivision (b), and shall set a final compliance date.~~

~~(b) A dispute resolution order may be issued for a period exceeding one year if the dispute resolution order includes a schedule of increments of progress specifying a final compliance date by which the emissions of air contaminants of a source for which the dispute resolution order is granted will be brought into compliance with applicable emission standards.~~

~~39959. (a) The state board may modify or revoke any dispute resolution order granted by any hearing officer if, in its judgment, the dispute resolution order does not require compliance with a schedule of increments of progress or emission standards as expeditiously as practicable, or the dispute resolution order does not meet the requirements of this chapter.~~

~~(b) Prior to revoking or modifying a dispute resolution order pursuant to this section, the state board shall conduct a hearing. The person to whom the dispute resolution order was granted shall be given immediate notice of the hearing, and shall be afforded an opportunity to appear at the hearing, to call and examine witnesses, and to otherwise partake as if he were a party to the hearing.~~

~~39960. The state board may adopt rules for the conduct of hearings pursuant to this chapter. The rules shall be consistent with this chapter and, so far as practicable, shall conform to the rules for administrative adjudications by state agencies in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.~~

~~39961. For any hearing conducted under this chapter, the hearing officer shall be an administrative law judge from the Office~~

1 of Administrative Hearings. An officer or employee of the state
2 board shall not serve as a hearing officer for any hearing conducted
3 pursuant to this chapter.

4 39962. (a) In case of a hearing to consider an application for
5 an interim dispute resolution order, the hearing officer shall serve
6 reasonable notice of the time and place of the hearing upon the
7 executive officer of the state board and upon the applicant.

8 (b) In case of a hearing to consider an application for a
9 modification of a final compliance date in a dispute resolution
10 order previously granted, the hearing officer shall serve notice of
11 the time and place of a hearing upon the executive officer of the
12 state board, and upon the applicant, not less than 10 days prior to
13 the hearing. The hearing officer shall also send notice of the hearing
14 to every person who requests notice, and shall obtain publication
15 of the notice in at least one daily newspaper of general circulation
16 within the state. The notice shall state the time and place of the
17 hearing and other information as may be necessary to reasonably
18 apprise the people of the state of the nature and purpose of the
19 meeting.

20 (c) In case of a hearing to consider an application for a dispute
21 resolution order other than those described in subdivision (a) or
22 (b), the hearing officer shall serve notice of the time and place of
23 a hearing upon the executive officer of the state board and upon
24 the applicant, not less than 30 days prior to the hearing. The hearing
25 officer shall also publish a notice of the hearing in at least one
26 daily newspaper of general circulation in the state, and shall send
27 the notice to every person who requests the notice, not less than
28 30 days prior to the hearing. The notice shall state the time and
29 place of the hearing, the place where the application, including
30 any proposed conditions or schedule of increments of progress, is
31 available for public inspection, and any other information that may
32 be necessary to reasonably apprise the people within the state of
33 the nature and purpose of the meeting.

34 (d) A hearing officer shall serve notice pursuant to subdivision
35 (a), (b), or (c) either by personal service or by first-class mail,
36 postage prepaid. If either the identity or address of any person
37 entitled to notice is unknown, the hearing officer shall serve that
38 person by publication of notice in the state pursuant to Section
39 6060 of the Government Code.

1 ~~39963. (a) Any hearing conducted by a hearing officer shall~~
2 ~~be held in a location readily accessible to the public.~~

3 ~~(b) The hearing officer shall allow interested members of the~~
4 ~~public a reasonable opportunity to testify with regard to the matters~~
5 ~~under consideration, and shall consider that testimony in making~~
6 ~~his or her decision.~~

7 ~~(c) The hearing officer shall prepare a record of the witnesses~~
8 ~~and the testimony of each witness at the hearing. The record may~~
9 ~~be an audio recording. The record shall be retained by the hearing~~
10 ~~officer while the dispute resolution order is in effect, or for the~~
11 ~~period of one year, whichever is longer.~~

12 ~~39964. (a) The hearing officer may administer oaths in any~~
13 ~~hearing in which the officer participates. At any hearing, the~~
14 ~~hearing officer shall require any witness to be sworn before~~
15 ~~testifying.~~

16 ~~(b) Whenever the hearing officer conducting any hearing deems~~
17 ~~it necessary to examine any person as a witness at the hearing, the~~
18 ~~hearing officer shall issue a subpoena, in proper form, commanding~~
19 ~~that person to appear before it, at a time and place specified, to be~~
20 ~~examined as a witness. The subpoena may require the person to~~
21 ~~produce all books, papers, and documents in his or her possession,~~
22 ~~or under his or her control, material to the hearing. A subpoena to~~
23 ~~appear before a hearing officer shall be served in the same manner~~
24 ~~as a subpoena in a civil action.~~

25 ~~(c) Whenever any person duly subpoenaed to appear and give~~
26 ~~evidence, or to produce any books and papers, before a hearing~~
27 ~~officer commits the acts described in Section 11455.10 of the~~
28 ~~Government Code, that person shall be deemed in contempt of~~
29 ~~court, and the hearing officer shall report the fact to the superior~~
30 ~~court of the county in which the hearing is held. Upon receipt of~~
31 ~~that report, the superior court shall proceed as specified in Section~~
32 ~~11455.20 of the Government Code. On the return of the attachment~~
33 ~~and the production of the body of the defendant, the superior court~~
34 ~~has jurisdiction of the matter. The person charged may purge~~
35 ~~himself or herself of the contempt in the same way, and the same~~
36 ~~proceeding shall be had, and the same penalties may be imposed,~~
37 ~~as in the case of a witness subpoenaed to appear and give evidence~~
38 ~~on the trial of a civil cause before a superior court.~~

39 ~~39965. (a) A hearing officer shall announce his or her decision~~
40 ~~in writing. The decision of a hearing officer shall include the~~

1 reasons for the decision. Copies of the decision shall immediately
2 be filed with the clerk of the state board and mailed to all of the
3 affected parties or their attorneys. The decision shall become
4 effective upon filing, unless the hearing officer orders otherwise.

5 (b) A hearing officer, in his or her discretion, within 30 days of
6 the effective date of the decision, may order the rehearing of any
7 matter if a person petitions for a rehearing within 10 days after a
8 copy of the decision has been mailed.

9 39966. (a) Judicial review may be made of a decision of a
10 hearing officer by filing a petition for a writ of mandate in
11 accordance with Section 1094.5 of the Code of Civil Procedure.
12 Except as otherwise provided in this section, the petition for a writ
13 of mandate shall be filed within 30 days after the decision has been
14 mailed pursuant to Section 39965. The right to petition for a writ
15 of mandate shall not be affected by the failure to seek a rehearing
16 before the hearing officer.

17 (b) (1) The complete record of the proceedings, or parts thereof
18 as are designated by the petitioner for a writ of mandate, shall be
19 prepared by the hearing officer and shall be delivered to the
20 petitioner within 30 days after a request, upon payment of the fee
21 specified in Section 69950 of the Government Code for the
22 transcript, the cost of preparation of other portions of the record,
23 and for certification thereof.

24 (2) The complete record includes the pleadings, all notices and
25 orders issued by the hearing officer, any proposed decision by the
26 hearing officer, the final decision, a transcript of all proceedings,
27 the exhibits admitted or rejected, the written evidence, and any
28 other papers in the case.

29 (3) If the petitioner for a writ of mandate, within 20 days after
30 the decision has been mailed, requests the hearing officer to prepare
31 all or any part of the record, the time within which a petition for
32 a writ of mandate may be filed shall be extended until 35 days
33 after the decision has been mailed. The hearing officer may file
34 with the court the original of any document in the record in lieu
35 of a copy.

36 (e) In any proceeding pursuant to this section, the court shall
37 receive in evidence any order, rule, or regulation of the state board,

- 1 ~~any transcript of the proceedings before the hearing officer, and~~
- 2 ~~further evidence as the court, in its discretion, deems proper.~~

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